

AGREEMENT

ON LONG-TERM STEWARDSHIP IN THE UNITED STATES

BETWEEN THE

ENVIRONMENTAL COUNCIL OF THE STATES

AND

**THE UNITED STATES (U.S.) DEPARTMENT OF DEFENSE-
OFFICE OF INSTALLATIONS AND ENVIRONMENT,**

**THE U.S. DEPARTMENT OF ENERGY-
OFFICE OF ENVIRONMENTAL MANAGEMENT**

**THE U.S. DEPARTMENT OF INTERIOR-
ASSISTANT SECRETARY- POLICY, MANAGEMENT AND BUDGET**

AND THE

**THE U.S. ENVIRONMENTAL PROTECTION AGENCY-
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE**

DRAFT- 8/30/02

I. BACKGROUND

Long-Term Stewardship (LTS) issues impact nearly every state since residual contamination may remain at many federal site cleanups throughout the United States (U.S.). As government agencies with responsibility for ensuring compliance with environmental laws and protection of public health and the environment, members of the Environmental Council of the States (ECOS) and the participating federal agencies have developed this Agreement to address LTS needs and activities at these sites.

II. PURPOSE

The purpose of this Agreement is to provide a common understanding and basis for discussion and coordination between ECOS and relevant federal agencies regarding LTS. Given that there are multiple federal agencies conducting both clean-up and stewardship activities, a coordinated effort is needed to address LTS at these sites. Such a forum provides an opportunity for the parties to discuss LTS issues, policies, procedures, coordination mechanisms and generally applicable tools for LTS sites. This dialogue will help promote a greater level of consistency, effectiveness and public health and environmental protection at contaminated properties throughout the country and should help foster a stewardship ethic into remediation and post-remediation activities.

III. PARTIES

The parties to this agreement are: the Environmental Council of the States (ECOS), the U.S. Department of Defense (DOD)- Office of Environmental Security, the U.S. Department of Energy (DOE)- Office of Environmental Management, the U.S. Department of Interior (DOI)- Assistant Secretary- Policy, Management and Budget and the U.S. Environmental Protection Agency (EPA)- Office of Solid Waste and Emergency Response (OSWER). Additional entities may become signators to this agreement with the consent of all the current parties.

IV. JOINT VISION FOR LONG-TERM STEWARDSHIP

The undersigned parties to this Agreement are committed to the protection of public health and the environment from risks associated with the clean-up of sites that may have residual contamination or ongoing waste management responsibilities for as long as necessary, or until all relevant parties agree that there are no legal requirements for further response action. To this end, the

parties aspire to establish and maintain a collaborative working relationship in our collective efforts to improve coordination and to ensure long-term stewardship challenges are met at these sites.

V. DEFINITION OF LTS

LTS generally includes the establishment and maintenance of physical and non-physical controls, implementation entities, authorities, accountability mechanisms, information and data management systems and resources that are necessary to ensure that clean-up sites with residual contamination or ongoing waste management responsibilities after completion of response action remain protective. These elements are more explicitly defined in the list of LTS site components below.

VI. SHARED PRINCIPLES FOR LTS

The following principles are presented to offer broad direction and advice as to the design, management and implementation of LTS functions and activities by the federal, state and other participants in the joint LTS process:

1. LTS Consideration in the Remedy Process- LTS needs to be actively considered in the remedial/ response action planning, design, implementation and decision-making processes. Life cycle costs and effectiveness of LTS and remedial options need to be factored into the remedy decisions.
2. Protectiveness- LTS functions and activities must assure ongoing protection of public health, the environment and natural ecosystems for sites with residual contamination after response action is undertaken.
3. Longevity- The commitment to ensure the sustainability of the remedy and the performance of LTS functions must extend over the lifetime of the contamination hazard and be able to span generations, if necessary. Given the potential duration of some remaining risks, current assumptions may require periodic reevaluation and modification.
4. LTS Roles and Responsibilities- LTS management and implementation roles and responsibilities need to be clearly articulated and accepted by all appropriate parties. Assumptions regarding the determination and apportionment of LTS activities among federal, state, tribal, local government and private entities (including the site's owner) also need to be defined and stated at the outset. The roles and responsibilities should be documented through legal and other means. In some cases, the site's owner will have principal responsibility for implementing and managing

LTS actions. Given the inter-generational aspect of LTS and the potential for change over time, legal and other mechanisms should be developed to ensure continued performance of these LTS roles and responsibilities.

5. Funding- The amount and sources of the funds necessary to carry out the LTS activities needs to be identified prior to implementation. A process for securing sufficient funding to assure continued protectiveness of LTS functions is also essential.
6. Ongoing Operations- All parties should consider LTS impacts resulting from ongoing operations, plans for new facilities, or new land uses, including those resulting from property transfers, as an integral part of their ongoing responsibilities.
7. Application of New Science and Technology- There should be a mechanism to examine and share new technologies for clean-up and LTS actions over time and to consider whether the application of such would provide a more cost-effective or protective means of assuring or enhancing protection of public health and the environment in ongoing or future response actions.
8. Natural, Historical and Cultural Resources- Conservation and protection of natural, historical and cultural resources should be integrated into the development, management and implementation of remedial actions and LTS functions. This consideration should extend to land management plans that have been implemented. Future land use plans should recognize the obligations and needs imposed on affected lands by LTS. Consultation with appropriate tribal representatives should also be undertaken on cultural resource matters associated with tribal lands.
9. Local government, public and stakeholder involvement and information sharing - Effective mechanisms need to be in place to assure that local government, stakeholders and the public have timely access to data and information and are provided suitable opportunities for public participation in ongoing LTS processes.
10. Expedite Formation of an LTS Framework- Federal, state, tribal and local agencies should work cooperatively to expedite formulation of policies, orders, guidance and training that are needed to institutionalize their LTS commitments.

VII. LTS SITE COMPONENTS

For each remediation/ response action site that has residual contamination or ongoing waste management responsibilities there should be a clear statement of LTS functions that provide a means to assure continuing protectiveness at the site. Such a statement of LTS responsibilities should be made prior to implementation and should recognize the value in having redundant or layered controls in certain circumstances, but should not entail development of duplicative requirements. The statement of LTS site components should include, but not be limited to, the following:

1. A **site history and contamination summary** that defines who owned and used the property for what periods and purposes, a depiction of the magnitude and extent of contamination, a description of historic or ongoing clean-up activities and standards and a characterization of remaining contamination pathways and risks associated with the site.
2. An **LTS management plan** including identification of existing, and to the extent possible future, management, implementation and land management entities, and they're agreed upon roles and responsibilities at the site.
3. **Engineered and physical controls** that are adequately documented.
4. **Institutional and land use controls** that are adequately documented.
5. A listing of **applicable authorities**, treaty obligations, performance standards and enforcement mechanisms being utilized to assure protection of public health, the environment and natural ecosystems.
6. Identification of the **source and amounts of funds** necessary to fulfill the LTS responsibilities at the site and the process for securing the necessary resources.
7. An **operation and maintenance plan** including spill and emergency response and security measures, as necessary.
8. A system of **performance accountability** including assessment, measurement, monitoring and reporting elements.
9. An adaptive management mechanism that provides for **periodic reassessment** and **consideration of new science and technologies** that may become available for protection of public health and the environment.

such that they remain current, are accessible to the public, and are designed with adequate flexibility to meet the needs of interested parties.

10. Ongoing public and stakeholder involvement and information sharing mechanisms.

10. A site transition framework with consistent transition criteria, such as that being developed by DOE, may also be a useful mechanism to facilitate certain ongoing LTS functions.

VIII. DISCLAIMER

Nothing in this Agreement will in any way infringe upon or limit the authority of any party to carry out its responsibilities under various federal and state laws. Additionally, nothing in this Agreement shall bind any party to provide funds that future legislative bodies will make appropriation decisions upon.

IX. EFFECTIVE DATE, AMENDMENTS AND TERMINATION PROVISIONS

This Agreement will become effective as to each party upon its signature by that party and shall remain in effect until termination by the parties. Any individual party may terminate its participation in this MOU by giving 60 days written notice to the other parties. The MOU may be amended from time to time as mutually agreed upon by all the parties.

X. SIGNATORS